

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office April 1, 2009, claims 5, 9 and 10 were rejected under 35 U.S.C. 112, second paragraph and claims 1-19 were rejected under 35 U.S.C. 102(b) as being anticipated by Munson et al. (U.S. 3,934,084). Accordingly, Applicant respectfully provides the following:

Rejections under 35 U.S.C. 112

Claims 5, 9 and 10 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 has been cancelled, and “said at least one period of time” recited in claims 9 and 10 finds antecedent basis in claim 6 from which it depends.

Rejections under 35 U.S.C. 102

Claims 1-19 were rejected under 35 U.S.C. 102(b) as being anticipated by Munson et al. (U.S. 3,934,084). M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. “To anticipate a claim, the reference must teach every element of the claim.” M.P.E.P. § 2131 states further,

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... “The identical invention must be shown in as complete detail as is contained in the...claim.

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits Munson does not teach every element of the claim set as provided herein. Accordingly, Applicant respectfully traverses this rejection.

In particular, Independent claims 1, 11 and 18 are drawn to an ambient noise monitoring device comprising a processing element structured to automatically obtain and record ambient noise values over time to create a temporal ambient noise map, wherein said ambient noise monitoring device iteratively records an ambient noise value corresponding to a time value, which may then average the ambient noise values obtained for select time values and correlate an average ambient noise value to each time value effectively creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of predetermined average ambient noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun; and an audio output component for receiving information corresponding to said temporal ambient noise map and using such information to produced and maintain a volume level relatively greater than the average ambient noise values recorded on the temporal ambient noise map for each time value, wherein the audio output device may respond to predicted ambient noise levels such that information broadcast therefrom may be perceived without undue interference from ambient noise. Munson fails to teach this aspect of the claimed invention.

The Examiner has rejected claims 2-10, 12-17 and 19, which each depend from claim 1, 11 and 18 under 35 U.S.C. § 102(a) as being anticipated by Munson. By virtue of their dependence from claims 1, 11 and 18, respectively, claims 2-10, 12-17 and 19 require, among other things, an ambient noise monitoring device comprising a processing element structured to automatically obtain and record ambient noise values over time to create a temporal ambient noise map, wherein said ambient noise monitoring device iteratively records an ambient noise value corresponding to a time value, which may then average the ambient noise values obtained for select time values and correlate an average ambient noise value to each time value effectively

creating a temporal ambient noise map, said temporal ambient noise map comprising a plurality of predetermined average ambient noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun; and an audio output component for receiving information corresponding to said temporal ambient noise map and using such information to produced and maintain a volume level relatively greater than the average ambient noise values recorded on the temporal ambient noise map for each time value, wherein the audio output device may respond to predicted ambient noise levels such that information broadcast therefrom may be perceived without undue interference from ambient noise. However, the Examiner has not established the Munson teaches this limitation in combination with the other limitations of claims 2-10, 12-17 and 19. Thus Munson fails to include every element of the rejected claims. Applicant thus respectfully requests that the rejection of dependent claims 2-10, 12-17 and 19 be withdrawn.

For at least this reason, Applicant respectfully submits that the prior art references do not, independently or in combination, explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore neither anticipates nor renders obvious the claims as provided herein.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,



Michael F. Krieger
Attorney for Applicant
Registration No. 35,232

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 321-4814
Facsimile: (801) 321-4893

JRM:brc